Pan American Grain Co., Inc. and Pan American Grain Mfg. Co., Inc. and Zorra Transport, Inc. *and* Seafarers International Union of North America, a/w Atlantic, Gulf, Lakes and Inland Waters District *and* Congreso de Uniones Industriales de Puerto Rico. Case 24–CA–6894

May 16, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND TRUESDALE

On February 1, 1995, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Pan American Grain Co., Inc. and Pan American Grain Mfg. Co., Inc. and Zorra Transport, Inc., Guaynabo, Puerto Rico, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Magdalena S. Revuelta, Esq., for the General Counsel.
Ruperto J. Robles, Esq., for the Respondent.
Jose Alberto Figueroa Rios, for the Party to the Contract.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. This is an unfair labor practice case prosecuted by the National Labor Relations Board's (the Board) General Counsel (the Government) acting through the Regional Director for Region 24 of the Board. Following an investigation by Region 24's staff, the Regional Director issued a complaint and notice of hearing (complaint) on April 29, 1994,[1] against Pan American Grain Co., Inc (PAG), Pan American Grain Mfg. Co., Inc. (PAGMFG), and Zorra Transport, Inc. (Zorra Transport), collectively (the Company) based on an unfair labor practice charge filed on March 7, and amended on March 22 and April 29, by Seafarers International Union of North America, a/w Atlantic, Gulf, Lakes and Inland Water District (the Union). I heard the case in trial in Hato Rey, Puerto Rico, on October 17.

Specifically the complaint alleges the Company on or about January 26, granted recognition to, and entered into and since then has maintained and enforced a collective-bargaining agreement with Congreso de Uniones Industriales de Puerto Rico (Congreso) as the exclusive collective-bargaining representative of ''all ordinary seamen, wiper, utility, able seaman, qualified mechanics and cooks,''[2] even though Congreso did not represent a majority of the employees in the unit. It is also alleged the Company acting through *Zorra* Master and Captain Jotham Myers (Captain Myers)[3] on about February 4, in violation of Section 8(a)(2) of the National Labor Relations Act (the Act), rendered assistance and support to Congreso by (a) threatening employees with discharge and/or being placed in vacation status should they not sign dues-checkoff agreements for Congreso and (b) withholding moneys from employees' wages and remitting the moneys to Congreso. Additionally, it is alleged the Company in violation of Section 8(a)(1) of the Act, acting through Captain Myers, (a) on or about mid-December 1993, at the Company's facility in Guaynabo, Puerto Rico, threatened employees with loss of employment should they engage in union or other protected concerted activity; (b) on or about the first week in January, at the *Zorra*, threatened employees with discharge and/or loss of employment should they engage in union or other protected concerted activity; and (c) on or about the first week in February at the Seaview Bar Guaynabo, Puerto Rico, threatened employees with loss of employment by telling them the Company would sell the *Zorra* and/or seek to reflag it to foreign vessel status should they join or assist the Union.

The Company denies having violated the Act in any manner.

All parties were afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record including the Government's brief and on my observation of the demeanor of the witnesses, I will, as more fully explained, conclude the Company violated the Act substantially as alleged in the complaint.

FINDINGS OF FACT

I. JURISDICTION

At times material PAG has been and is a Puerto Rican corporation with an office and place of business located in Guaynabo, Puerto Rico, where it is engaged in the importation, manufacturing and sale of grains, animal feeds, rice, and related products. During the calendar year preceding issuance of the complaint herein, a representative period, PAG, derived gross revenues in excess of $500,000 and during that

[1] All dates are 1994 unless otherwise indicated.

[2] Zorra Transport owns and operates a ship called the *I.T.B. Zorra* (*Zorra*) and the above employees are utilized, at least in part, in the operation of the *Zorra*.

[3] It is admitted that Captain Myers is a supervisor and agent of the Company within the meaning of Sec. 2(11) and (13) of the Act.

same period purchased and received at its Guaynabo, Puerto Rico facility grains, rice, and other goods and materials valued in excess of $50,000 shipped directly from suppliers located outside the Commonwealth of Puerto Rico. The complaint alleges, the Company admits, the evidence establishes, and I find PAG is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At times material PAGMFG has been and is a Puerto Rican corporation with an office and place of business located in Guaynabo, Puerto Rico, where it is engaged in the importation, manufacturing, and sale of grains, animal feeds, rice, and related products. During the calendar year preceding issuance of the complaint herein, a representative period, PAGMFG derived gross revenues in excess of $500,000 and during that same period purchased and received at its Guaynabo, Puerto Rico facility grains, rice, and other goods and materials valued in excess of $50,000 shipped directly from suppliers located outside the Commonwealth of Puerto Rico. The complaint alleges, the Company admits, the evidence establishes, and I find PAGMFG is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At times material Zorra Transport operated a ship called the *Zorra* where it is engaged in the interstate transportation of rice between the continental United States and the Commonwealth of Puerto Rico. During the 6 months preceding issuance of the complaint herein, a representative period, Zorra Transport in conjunction with its shipping operations, derived gross revenues in excess of $500,000 for the transportation of rice in interstate commerce under arrangements with and as agent for PAG and PAGMFG. The complaint alleges, the parties admits, the evidence establishes, and I find Zorra Transport functions as an essential link in the transportation of rice in interstate commerce.

At times material PAG, PAGMFG, and Zorra Transport have been affiliated business enterprises with common officers, ownership, directors, management, phone, and purchasing, have formulated and administered a common labor policy affecting employees of the operations, and have shared common premises and facilities, have provided services for and made sales to each other, have interchanged personnel with each other, and have held themselves out to the public as a single-integrated business enterprise. Accordingly, I find PAG, PAGMFG, and Zorra Transport constitute a single-integrated business enterprise and a single employer under the Act.

II. LABOR ORGANIZATIONS

It is admitted that Congreso is a labor organization within the meaning of Section 2(5) of the Act.

The Company, however, denies the Union is a labor organization within the meaning of Section 2(5) of the Act. The Act defines a ''labor organization'' as:

> any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Union Port Agent Steve Ruiz (Union Port Agent Ruiz) testified, without contradiction,[4] the Union is a maritime organization in which employees participate, elect officers, and has a constitution, and exists to represent employees in their dealings with employers concerning wages, grievances, and working conditions. Accordingly, I conclude and find the Union is a labor organization within the meaning of Section 2(5) of the Act. See *Mac Towing*, 262 NLRB 1331 (1982), in which the Board found the Union to be a labor organization within the meaning of the Act.

III. UNFAIR LABOR PRACTICES

A. *The Facts*

The Company has for a number of years operated in Guaynabo, Puerto Rico, where it processes grain (rice) purchased in the Continental United States. The grain is transported as ''raw grain'' to the Company's Puerto Rico facilities where it is processed for industrial, commercial, and consumer uses. According to Company President Jose Gonzalez (Company President Gonzalez), the Company has in recent years enjoyed substantial growth both in volume of grain processed and revenues derived.[5]

Congreso has been the recognized collective-bargaining representative of the Company's production and maintenance employees.[6] Congreso's most recent collective-bargaining agreement with the Company for the production and maintenance employees is, by its terms, effective from November 22, 1992, until November 21, 1996. Three classifications of employees (with rates of pay for each) are set forth in the agreement, namely, skilled A employees ($6.35 per hour), skilled B employees ($5.75 per hour), and nonskilled employees ($4.75 per hour).

Company President Gonzalez testified that as business increased he purchased the *Zorra* and in February 1993, he along with two company employees went to California to oversee refurbishing of the ship. Repairs were made on the *Zorra* in California until August 1993, at which time the *Zorra* was moved to Portland, Oregon, for final repairs. According to Gonzalez the *Zorra* sailed from Portland, Oregon, toward San Juan, Puerto Rico, on September 22, 1993. Gonzalez stated that when the ship docked in Puerto Rico it was made an integrated part of the plant. President Gonzalez explained:

> The reason for this is that the vessel, as it was designed, is part of the warehouse of the factory. The factory has fourteen thousand (14,000) tons of warehouse, but the vessel has twenty-eight (28,000) tons of capacity. Therefore, the vessel is substantially the warehouse of the factory. It is impossible to receive the vessel and to place everything inside the factory. The vessel has to wait until the cargo is processed. That's the way the plant was designed.

[4] I credit Ruiz' undisputed testimony concerning the Union.

[5] Gonzalez said growth had been by a factor of 10.

[6] The unit as more specifically described follows:

> All production and maintenance employees of the [Company] at the Guaynabo Plant, including, but not limited to, drivers, helpers, mechanic and electricians, but excluding all office clerical employees, guards, and supervisors as defined in the Act.

Union Port Agent Ruiz testified the Union's Seattle, Washington office notified him in December 1993, the *Zorra* would be sailing between Puerto Rico and the continental United States. Ruiz went to the Company to check on the status of the shore (or factory) employees and learned they were represented by Congreso but that the marine employees were not organized. Ruiz immediately prepared to send some individuals to the Company to work on the vessel so as to organize it. As part of the campaign to organize the marine employees,[7] Ruiz mailed and faxed the following letter to the Company:

> January 31, 1994
>
> Mr. Jose Gonzalez
> President
> Pan American Grain Company
> P.O. Box 411–36
> Minillas Station
> Anturce, P.R. 00946
>
> Dear Mr. Gonzalez:
>
> I am the local port agent for the Seafarers International Union, Atlantic, Gulf, Lakes and Inland Waters District, AFL–CIO (SIU). This letter is to inform you that the SIU is currently attempting to organize the marine unit of your company.
>
> If you wish to discuss this matter with me, you may contact me at 721–4033. I look forward to meeting with you.
>
> Sincerely,
>
> Steve Ruiz
> Port Agent

Tony Mohammed testified he was employed as a QMED (and for a limited time third assistant engineer) on the *Zorra* from December 1993 until May. Mohammed said that during his employment on the *Zorra* it had a crew of 20.[8]

Mohammed testified that during the week of December 20, when he was interviewed by the chief engineer for employment on the *Zorra*, Captain Myers (an admitted supervisor and agent of the Company) interrupted the interview and wanted to know where he was from. Mohammed told Myers and added he was in the Union but wasn't there to bring the Union in. Mohammed testified Captain Myers responded that he ''didn't want no union's [sic] in there.'' Mohammed told Myers he was just there to work and Captain Myers said, ''If you try to bring any unions in here, I'll get rid of you my way. If anybody tries to bring any union's [sic] in I'll get rid of them my way.''[9]

Victor Serrano worked on the *Zorra* from January 5 to 23, as a wiper in the deck department. Serrano testified, without contradiction, that on his first day aboard the ship Captain Myers told him, while they were alone in Myers' office, that if he (Serrano) had any plans to organize a union he would not be able to stay on board.[10]

Union Port Agent Ruiz testified he met on three occasions with certain *Zorra* employees during the first part of February at a ''little bar'' at the gangway to the ship next to the grain elevators. Ruiz described the bar as ''the place where everybody got together after work.''

At the first meeting on February 1, Ruiz explained the right to organize under the Act and gave the employees some literature. Ruiz said Captain Myers walked up and when he did the employees left the area. Ruiz explained that Captain Myers' appearance ''pretty much made everybody disappear.''[11] After the employees left Ruiz asked Captain Myers if he knew he was trying to ''organize the ship.'' Captain Myers acknowledged he was aware. Ruiz asked Myers why the crew did not have a pension plan or health coverage and Myers said Company President Gonzalez was looking into it and added, ''he wouldn't have the vessel to be organized. That they would put it under foreign flag first . . . before they would allow a ship to be organized by a union.''

Union Port Agent Ruiz testified he held the next organizing meeting the next day (February 2) at the same bar.[12] Ruiz said that after about 45 minutes Captain Myers again showed up, but, the crew remained this time. Ruiz told Myers they were having an organizing meeting but Myers remained in that same portion of the bar anyway. Myers told the group the ship's crew was a family and if the crew didn't like the family they should get off the ship. Captain Myers also said, ''We'll just sell the ship if you guys want to go Union.'' Captain Myers also said the Company was going to weld another section into the ship and the upgrade in tonnage would result in all the licensed officers not having a job. Ruiz testified ''the guys pretty much left because they were a little nervous about that and a little scared.''[13]

Ruiz met a third time with crewmembers at the same bar on February 3.[14] Ruiz talked with the crew for about an hour when Captain Myers showed up and said, ''he knew we were holding a meeting'' and added ''he wanted to see who was there,'' that ''he was counting heads.'' Captain Myers told the group, ''[Company President] Gonzalez was putting the ship under foreign flag, so nobody would have any work because the Company couldn't afford unions, and wouldn't have any unions.'' Captain Myers then directed Ruiz to look

[7] Ruiz testified the marine unit he sought consisted of the unlicensed employees, namely, the qualified members of the engine department (QMED) engineers and QMED electricians, able-bodied seamen (AB), wipers, the chief and assistant chief cook.

[8] He describes the crew as a captain, a chief, second and third mates, chief engineer, and first, second, and third assistant engineers (all of which have duties that may well qualify them as supervisors within the meaning of Sec. 2(11) of the Act). Also in the crew—three ABs, two ordinary seamen, two QMEDs engineer, one QMED electrician, two wipers, a chief, and assistant cook.

[9] Mohammed appeared to testify truthfully; accordingly, I credit his uncontridicted testimony as outlined above.

[10] I credit Serrano's unrefuted testimony.

[11] Ruiz specifically recalled that a QMED named David was present as well an AB and perhaps a first engineer.

[12] Ruiz stated some of those present were first engineer ''Mike,'' second engineer ''Richard,'' QMED ''David,'' AB ''Terry,'' a cook, and Mohammed.

[13] First Assistant Engineer Michel Fowler, an admitted supervisor of the Company, testified Captain Myers attended either the second or third meeting with Ruiz. Fowler testified Captain Myers ''wasn't a nice guy'' that he ''got real smart'' with Ruiz and stated, ''unions were no good, and he didn't want union's [sic] on the boat,'' and he would ''reflag the vessel'' and have it enlarged so he could '''get deep-sea people' to be on the boat.''

[14] Ruiz stated it was ''pretty much the same bunch of guys,'' plus the other cook on this occasion.

at the foot of the gangway where ''a very big stout fellow'' was. Myers wanted to know if Ruiz could see the fellow. Ruiz said he could and Myers responded, ''I have that guy on there for one reason, that's to keep unions off that ship.'' Ruiz told Captain Myers he would not board the vessel without first being invited. Myers responded, ''I'm just letting you know that's what that big guy is there for, to keep unions off the ship.'' Ruiz gave the crew union T-shirts and caps and offered Captain Myers one. Myers told Ruiz he could not afford the cap and T-shirt because it cost too much.

QMED Mohammed[15] stated he and others[16] were in the ship mess hall on February 4, waiting to sail to New Orleans when two ''unfamiliar faces'' from Congreso stated in the presence of Captain Myers they were extending coverage of the collective-bargaining agreement between Congreso and the Company to the ship employees and they would have to sign dues-checkoff authorizations for Congreso. Mohammed testified wiper Juan Molinari asked Captain Myers what would happen if he did not sign a dues-checkoff authorization. Captain Myers told Molinari, ''Well, you can't work here.'' According to Mohammed an AB named ''Craig'' told Captain Myers, ''that oughta stop the S.I.U. [the Charging Party herein]'' and Myers responded affirmatively. Mohammed told Captain Myers he was not paying dues to Congreso and Myers responded, ''I'll just give you some extra vacation time.''

Congreso President Jose Figueroa Rios (Congreso President Rios) is Congreso's representative for the Company's shore employees and, on January 19, wrote Company President Gonzalez asking for a meeting to discuss the collective-bargaining agreement and its application to the employees utilized on the *Zorra*. Gonzalez met with Rios and they signed a ''stipulation'' on January 26, 1994, extending the parties' collective-bargaining agreement to cover the employees of the *Zorra* (except that seniority for the ship and shore employees would be treated separately). Gonzalez and Rios also agreed to three pay classifications for employees on the ship, namely: (a) ordinary seamen, wipers, and utility employees ($27,500 annual salary); (b) able seamen and qualified mechanics ($35,000 annual salary); and (c) cook ($30,000 annual salary).

Congreso President Rios stated that shortly after he and Company President Gonzalez signed the ''stipulation'' he notified the ship employees of the agreement. Rios told the ship employees they had to sign dues-checkoff authorizations, and some did.

The parties stipulated that from December 1993 to the end of February a minimum of 12 employees were employed on the *Zorra*, including officers, and no union dues were deducted from of any of the ship's employees pay prior to February 18. Four ship employees signed dues-checkoff authorizations for Congreso on February 4, namely Greg Reeser, Jorge Corrales Barrantes, Idelfonso Quezada Rosa, and Frank Jimenez Quinones. Deductions were made from these employees' pay effective on and after February 18.

[15] As of late January Mohammed had become a QMED rather than a third assistant engineer.

[16] Mohammed said there were two or three ABs, the chief and assistant cook, the wiper, and several others present at the meeting.

QMED Mohammed testified that when the *Zorra* is in port[17] it utilizes ''shore-side'' electrical power so the ships generators can be shut down. To accomplish the power transfer, ship personnel (a QMED electrician and sometimes a wiper or an AB) go to the factory and make the necessary wire connections which takes approximately 1 to 2 hours. Mohammed also testified he had seen approximately four employees from the plant work on the ship ''sweeping up rice'' but added there was otherwise no interchange between ship and shore employees. Plant employees never sail on the ship and all ship employees are required to obtain a U.S. Coast Guard ''Merchant Marine Document'' to work or sail on the ship.

Company President Gonzalez testified regarding employee interchange, ''our employees work on the plant as well as on the vessel. . . . because we are in the habit of moving personnel according to where the demand for work is.'' Gonzalez said electricians and mechanics from the *Zorra* may, when there is a ''break down'' at the factory, be assigned to make the necessary repairs at the plant and that plant personnel have done the same on the ship. Gonzalez said such interchange takes place, ''all the time.'' Gonzalez, however, acknowledged the Company keeps no records of ship personnel working at the plant or vice versa. Gonzalez also acknowledged that a number of the ship's crew live on the vessel.

V. DISCUSSION, ANALYSIS, AND CONCLUSIONS

The facts on which the following findings are made are for the most part undisputed.[18]

A. *Alleged Threats of Loss of Employment*

1. It is alleged at paragraph 7(a) of the complaint that Company Supervisor and Agent Captain Myers on or about mid-December 1993, at the Company's Guaynabo, Puerto Rico facility threatened employees with loss of employment should they engage in union or concerted protected activities.

Uncontradicted credited testimony establishes that when QMED Mohammed interviewed for employment during the week of December 20, 1993, he told Captain Myers he was in the Union but was not there to try to bring the Union in. Captain Myers told Mohammed if he, or anyone else, tried to bring any union in, he (Myers) would get rid of Mohammed, or anyone else, his way. Although Captain Myers was not conducting the interview in question he, as management's top representative on the ship, wanted any potential employee to know he would not tolerate union activity on his ship and would get rid of anyone who tried.

Myers' threat to discharge anyone that might attempt to bring in a union is one of the most flagrant means by which an employer can dissuade employees from selecting a bargaining representative. No purpose was advanced to attempt to justify Captain Myers' actions. Captain Myers' statements violate Section 8(a)(1) of the Act in as much as such statements tend to coerce, intimidate, interfere with, and discour-

[17] The journey from Puerto Rico to New Orleans, Louisiana, and return takes approximately 18 days. The ship is generally in port in Puerto Rico from 30 to 60 days before it sails again.

[18] The only factual dispute centers around the extent of interchange between the ship and shore employees. I will address those facts at the portion of this decision covering whether an accretion occurred.

age employees from engaging in activities protected under Section 7 of the Act. See, e.g., *Photo Drive Up*, 267 NLRB 329, 354–355, 366 (1983).

2. It is alleged at paragraph 7(b) of the complaint that Company Supervisor and Agent Captain Myers during the first week of January on the *Zorra* threatened employees with discharge and/or loss of employment should they engage in union or concerted protected activities.

It is undisputed that Captain Myers told deck crew wiper Serrano, while the two were alone in Myers' office, that if Serrano had any plans to organize the ship's employees he would not be able to remain on the ship.

As is reflected by other comments of Captain Myers set forth here, this was not merely an isolated comment by Myers but rather part of a plan to unlawfully discourage employee participation in activities protected by the Act. Furthermore Captain Myers made the comments in his office which is the very seat of authority on the ship. No legitmate explanation, if one could exist, was advanced to justify Captain Myers' statement to Serrano. I find such violated Section 8(a)(1) of the Act.

3. It is alleged at paragraph 7(c) of the complaint that during the first week in February at the Seaview Bar Company Supervisor and Agent Captain Myers threatened employees with loss of employment by telling them the Company would sell the *Zorra* and/or seek to reflag its ship to foreign status should they join or assist the Union.

It is undisputed that Union Port Agent Ruiz met with employees of the *Zorra* at the Seaview Bar on February 1–3. On each occasion Captain Myers, though uninvited, appeared at the Union's organizing meetings. Myers knew Ruiz was trying to organize the ship's employees and stated he was there to count heads and see who was present. Captain Myers also told the crewmembers, ''We'll just sell the ship if you guys want to go union.'' Myers reminded crewmembers they were a family and if they did not like the family they should just get off the ship. Captain Myers told crewmembers Company President Gonzalez was, ''Putting the ship under foreign flag,'' ''so nobody would have work'' because the company ''couldn't afford'' and ''wouldn't have any unions.'' Additionally Captain Myers told crewmembers the Company would weld another section into the ship to upgrade its tonnage and the licensed officers currently on the ship would be out of a job.

During the February meetings at the Seaview Bar Captain Myers made it unmistakably clear that if the employees chose to exercise their statutory right of joining or supporting a union they would do so at the expense of their jobs. Such flagrant threats violate Section 8(a)(1) of the Act, and I so find.

B. *Recognition of Congreso and Related Acts*

1. It is alleged at paragraphs 6(a) and (b) of the complaint that the Company, on or about January 26, granted recognition to and entered into a collective-bargaining agreement with Congreso as the exclusive bargaining representative of ''All ordinary seamen, wiper, utility, able seamen, qualified mechanics and cooks'' at a time when Congreso did not represent a majority of the unit employees.

Normally the first issue addressed in a factual situation such as is presented here would be whether the ship's (*Zorra*) employees constitute an accretion to the existing shore (production and maintenance) bargaining unit such as to authorize the already recognized Congreso to act as exclusive bargaining agent for the ship's employees. If the ship's employees constitute an accretion to the shore unit then the Company and Congreso could validly extend their preexisting collective-bargaining agreement to cover the ship's employees. However, counsel for the General Counsel's theory of the case was not advanced along those lines but rather that Congreso sought and the Company granted it exclusive recognition as bargaining agent for the ship's employees at a time when Congreso did not represent an uncoerced majority of the ship's employees. Counsel for the General Counsel contends such actions by the Company constitute unlawful assistance to Congreso.

First, Congreso has for an extended time served as the exclusive bargaining agent for the Company's shore (production and maintenance) employees and has entered into collective-bargaining agreements with the Company covering such employees. The most recent being effective from November 22, 1992, until November 21, 1996.

The *Zorra* became a functional part of the Company in December 1993.[19] The parties stipulated a minimum of 12 employees were employed on the *Zorra* from December 1993 to the end of February 1994. The Company and Congreso signed a stipulation dated January 26, in which the Company recognized Congreso as the exclusive bargaining representative for the ship's employees and extended coverage of their preexisting collective-bargaining agreement to cover the ship employees. Congreso requested such recognition in writing on January 19, however, Congreso President Rios makes no reference in his letter to Congreso's status among the ship employees. The record is void of any evidence that Congreso represented any of the ship employees except the four who signed post recognition dues-checkoff authorization forms. Company President Gonzalez testified Congreso President Rios claimed he (Gonzalez) was violating the parties preexisting bargaining agreement in that Gonzalez had unilaterally changed conditions of employment of unit employees by assigning them to ship duties. Gonzalez testified that he, after reflection, ''had to admit'' Rios ''was right'' and solved the problem by signing the stipulation extending the parties' preexisting collective-bargaining agreement to cover the ship's employees.

Gonzalez said he recognized Congreso and agreed to extend coverage to the ship's employees based only on Rios' claims as outlined above and that no other evidence was presented regarding Congreso's representative status among the ship's employees.

It is clear that neither the Company nor Congreso demonstrated on this record that Congreso represented an uncoerced majority of the ship employees at any time. As the Supreme Court noted in *Ladies Garment Workers v. NLRB*, 366 U.S. 731 at 738 (1961):

> The law has long been settled that a grant of exclusive recognition to a minority union constitutes unlawful support in violation of [Section 8(a)(2) of the Act] because the union so favored is given a ''marked advan-

[19] Although the Company purchased the *Zorra* in February 1993, the *Zorra* did not sail from Portland, Oregon, to its home port in Puerto Rico until September 22, 1993. It appears the Company commenced hiring employees to work on the *Zorra* in December 1993.

> tage over any other in securing the adherence of employees. [Citation omitted.]

I find the Company violated Section 8(a)(2) and (1) of the Act when on January 26, it granted recognition and exclusive status to Congreso as well as extended their preexisting collective-bargaining agreement to cover the ship employees. That Company President Gonzalez may have, in good faith, believed Congreso's President Rios was correct or that Congreso represented a majority of the ship employees is no defense. Such good-faith belief is immaterial. See, e.g., *Human Development Assn. v. NLRB*, 937 F.2d 657 at 665 (D.C. Cir. 1991), where the court held ''the employer's knowledge or ignorance of the union's minority status is irrelevant to the question whether the recognition constitutes an unfair labor practice.''

The Company in its answer and at trial asserted the ship employee positions were new job classifications that constitute an accretion to the shore unit employees represented by Congreso.

The court in *Lammert Industries v. NLRB*, 578 F.2d 1223, 1225 at fn. 3 (7th Cir. 1978), noted:

> An accretion is simply the addition of a relatively small group of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity. The additional employees are then properly governed by the unit's choice of bargaining representative. *NLRB v. Food Employers Counsel, Inc*., 399 F.2d 501, 502–503 (9th Cir. 1968).

In determining whether an accretion exists the Board in *United Parcel Service*, 303 NLRB 326 at 327 (1991), noted:

> In furtherance of the statutory duty to protect employees' right to select their bargaining representative, the Board follows a restrictive policy in finding accretion. See, e.g., *Towne Ford Sales* 270 NLRB 311 (1984). One aspect of this restrictive policy has been to permit accretion only in certain situations where new groups of employees have come into existence after a union's recognition or certification or during the term of a collective bargaining agreement. If the new employees have such common interests with members of an existing bargaining unit the new employees would, if present earlier, have been included in the unit or covered by the current contract, then the Board will permit accretion in furtherance of the statutory objective of promoting labor relations stability. *Gould, Inc*. 263 NLRB 442, 445 (1982).

The Board weighs a variety of factors in determining whether a particular group of employees constitute an accretion to an existing unit. Such factors are: (1) integration of operations; (2) centralization of administration and management control; (3) geographic proximity; (4) similarity of working conditions and skills; (5) labor relations control; (6) common or separate supervision; and (7) bargaining history. See, e.g., *King Radio Corp.*, 257 NLRB 521 at 525 (1981), and *United Parcel Service*, supra. Where there are factors militating toward and against accretion a balancing of the factors is necessary. That is, the Board must balance the rights of employees to express their desires concerning representation against the policy favoring continuity in collective-bargaining relationships.

The Board has long noted it will not, under the guise of accretion, compel employees who may constitute a separate appropriate unit to be included in an overall or preexiting unit without allowing such employees the opportunity to express their preference in a secret ballot election. See, e.g., *Melbet Jewelry-Orchard Park*, 180 NLRB 107 at 110 (1969).

Applying the above principles to the instant facts, it is clear the ship employees do not constitute an accretion to the existing shore unit represented by Congreso.

There are factors militating toward and against accretion; however, those militating against accretion far outweigh those militating toward an accretion. In that regard, I note the Company not only utilizes the *Zorra* to transport grain from the continental United States to Puerto Rico, but it also utilizes its ship as a floating warehouse. The shore facilities do not have the necessary capacity to initially accommodate a full load of grain from the *Zorra*. Grain is thus stored, at least temporarily, on board the ship. Such tends to demonstrate, albeit in a limited fashion, a degree of integration of operations between the ship and shore facilities and weighs in favor of finding an accretion. The *Zorra* is also docked sufficiently close to the shore facilities to allow ''electrical power'' to be extended from the shore facilities to the ship while the ship is in port. Thus, geographic proximity is balanced ever so slightly in favor of an accretion finding.

The above two factors however, cannot out weigh the overwhelming evidence that militates against a finding of an accretion.

The skills, duties, functions, and pay rates of the shore and ship employees differ dramatically and compel a finding against an accretion. The unit covered by the collective-bargaining agreement between the Company and Congreso consists of the production and maintenance employees. The agreement identifies three classifications of production and maintenance employees with pay rates for each, namely, ''Skilled A employees'' ($6.35 per hour), ''Skilled B employees'' ($5.75 per hour), and ''Non-skilled employees'' ($4.75 per hour). The classifications and rates of pay for the ship employees are, ''Ordinary seamen, Wiper and Utility'' ($27, 500 annually), ''Cook'' ($30,000 annually), and ''Able seamen and qualified mechanics'' ($35, 000 annually). The ship employees are salaried whereas the shore employees are paid less at an hourly rate. The ship employees receive up to an $1800 annual stipend for transportation which the shore unit employees do not receive. All ship employees are required to obtain United States Coast Guard Merchant Marine cards. Able seamen and qualified members of the engineering department (OMED) must accumulate ''a certain amount of sea time'' and pass an examination in order to be certified to work in such positions. The skills required for ship duty are clearly different from those required of the production and maintenance employees in the shore unit. No shore unit employee sails on the *Zorra* while it is at sea for 18 days making the trip between Puerto Rico and New Orleans, Louisiana. Some crewmembers even live full time on the ship. There are separate seniority lists and sick leave provisions for the ship and shore employees.

I am persuaded the skills, duties, and functions of the shore employees are distinctively different from those of the ship employees and the pay rates for the two groups reflect that difference.

There is only a slight degree of interchange between ship and shore employees. Company President Gonzalez' testimony that such interchange takes place all the time is, I am persuaded, an exaggeration. I rather rely on other testimony that interchange is very limited. QMED Mohammed testified ship employees work only on the ship with the exception of when two or three ship employees, for approximately 1 hour, are utilized to make ''electrical connection[s] between the ship and the shore'' so the ship's on-board generators can be turned off for maintenance. I am not unmindful there is some evidence a few shore employees may have been utilized on a limited basis to perform chores such as sweeping up rice on the deck of the ship; however, such limited interchange cannot support a finding of accretion herein.

The lines of supervision for the ship and shore employees are different. As QMED Mohammed creditably testified, the captain is the master of the ship and has overall supervision of the ship employees. The chief mate supervises the deck operations as well as the loading and unloading of the ship. The second and third mates supervise the able and ordinary seamen as well as all cargo operations. The chief engineer supervises the engineroom and the first and the second engineers supervise the other engineers and are responsible for the fuel oils. There is no record evidence that any ship supervisor ever supervised any shore employees. Nor is there any evidence that any shore supervisor ever supervised any ship employees.

There is no bargaining history that would favor an accretion inasmuch as the *Zorra* is the first (and only) ship purchased and/or utilized by the Company.

The evidence herein, when evaluated in light of the applicable legal principles, leads me to conclude the Company has failed to present evidence to support its affirmative defense that the ship employees constitute an accretion to the preexiting shore unit of production and maintenance employees.

C. *Threats of Discharge and to Place Employees in Vacation Status if they did not sign Dues-Checkoff Authorizations*

It is undisputed that on February 4, Captain Myers told employees (QMED Mohammed and deck wiper Molinari) if they did not sign dues-checkoff authorizations for Congreso he would place Mohammed on extra vacation time and Molinari would not be allowed to continue working on the ship. Captain Myers made these comments in the presence of other ship employees and Congreso President Rios. Rios acknowledged he told the ship employees they came under the collective-bargaining agreement for the shore employees and they (the ship employees) had to sign dues-checkoff authorizations for Congreso. Four ship employees, namely, Greg Reeser, Jorge Corrales Barrantes, Idelfonso Quezada Rosa, and Frank Jimenez Quinones, signed such authorizations that day. The parties stipulated that as of February 18, union dues were deducted from these four employees' wages and transmitted to Congreso.

The Act guarantees employees the right to determine for themselves, free from coercion, whether they shall sign dues-checkoff authorizations. See, e.g., *Baggett Industrial Constructors*, 219 NLRB 171–172 (1975). See also *Tribuiani's Detective Agency*, 233 NLRB 1121 (1977).

Setting aside all other aspects of the instant case (unlawful recognition, etc.), it is clear the Company, acting through Captain Myers, told the ship employees they had no alternative to signing dues-checkoff authorizations for Congreso or they would lose their jobs. Requiring the ship employees, as a condition of employment, to permit the Company to check off dues for Congreso and by deducting such dues and transmitting same to Congreso, the Company rendered assistance and support for Congreso in violation of Section 8(a)(2) and (1) of the Act and I so find.

CONCLUSIONS OF LAW

1. Pan American Grain Co., Inc., Pan America Grain Mfg. Co., Inc., and *Zorra* Transport, Inc. are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and constitute a single-integrated business enterprise and a single employer under the Act.
2. Congreso de Uniones Industrials de Puerto Rico is a labor organization within the meaning of Section 2(5) of the Act.
3. Seafarers International Union of North America, a/w Atlantic, Gulf, Lakes and Inland Waters District is a labor organization within the meaning of Section 2(5) of the Act.
4. The Company violated Section 8(a)(1) of the Act by threatening its employees with discharge and/or loss of employment should they engage in union or other protected concerted activities.
5. By on or about January 26, granting recognition to Congreso as the exclusive bargaining representative of the unit of ship (*Zorra*) employees and extending the terms of their collective-bargaining agreement to cover the ship employees, by threatening its ship employees with discharge and/or being placed in vacation status should they not sign dues-checkoff authorizations for Congreso, and by deducting dues from the earnings of its employees at the *Zorra* and remitting same to Congreso, the Company has rendered and is rendering unlawful aid, assistance, and support to Congreso and has thereby engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(2) and (1) of the Act.
6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found the Company has engaged in certain unfair labor practices, I recommend it be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act.

Having found the Company unlawfully granted recognition to Congreso as exclusive bargaining representative of its ship employees, I will recommend the Company be required to withhold recognition from Congreso as to the ship employees and cease giving effect to any collective-bargaining agreement, modification, extension, renewal, or supplemental agreement between the parties as to the ship employees until such time as Congreso shall have been certified by the Board as the exclusive bargaining representative of an appropriate bargaining unit of the ship employees. Nothing in this proposed Order will authorize or require the withdrawal or

elimination of any wage increase or other benefits, terms, or conditions of employment which may have been established for the ship employees by any such agreement. Inasmuch as certain of the ship employees signed dues-checkoff authorizations under coercion or pursuant to a collective-bargaining agreement to which the Company must cease giving effect, the Company may no longer withhold dues or other monies from the earnings of its ship employees pursuant to any such agreement. I further recommend the Company reimburse all present and/or former ship employees for all initiation fees, dues, or other moneys exacted from them by or on behalf of Congreso pursuant to any dues-checkoff authorizations or any collective bargaining agreement or otherwise, together with interest thereon to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[20]

ORDER

The Respondent, Pan American Grain Co., Inc., Pan American Grain Mfg. Co., Inc., and *Zorra* Transport, Inc., Guaynabo, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing and bargaining with Congreso de Uniones Industriales de Puerto Rico, its successors or assigns as the collective-bargaining representative of ''All ordinary seamen, wiper, utility, able seamen, qualified mechanics and cooks'' employed by the Respondent on the *Zorra* unless and until Congreso has been certified by the National Labor Relations Board as the exclusive bargaining representative of any such employees in an appropriate bargaining unit.

(b) Giving effect to its collective-bargaining agreement with Congreso or its successors or assigns with respect to the ship employees referred to above and any modifications, extensions, renewals, or supplements that may have been applied to those employees provided that nothing in this Order shall require the withdrawal or elimination of any wage increase or other benefits, terms, and conditions of employment that may have been established pursuant to any such agreement.

(c) Assisting Congreso de Uniones Industriales de Puerto Rico to become or remain the representative of the ship employees including threatening employees with discharge or being placed in vacation status should they not sign dues-checkoff authorizations for Congreso.

(d) Threatening its employees with discharge or loss of employment if they engage in union or other concerted protected activity.

(e) In any like or related manner interfering with, retraining, or coercing its employees in the exercise of any rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reimburse all former and present employees employed on the *Zorra* for all initiation fees, dues, and other moneys, if any, paid by or withheld from them in the manner set for in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Guaynabo, Puerto Rico facilities including its ship the *Zorra*, copies of the attached notice marked ''Appendix.''[21] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. The notices shall be printed both in English and Spanish. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[20] If no exceptions are filed as provided by 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[21] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY THE ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the Act and has ordered us to post and abide by the following.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid and protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT recognize and bargain with Congreso de Uniones Industriales de Puerto Rico or its successors or assigns as the collective-bargaining representative of our ship (*Zorra*) employees unless and until the Union has been certified by the National Labor Relations Board as the representative of any such employees in an appropriate unit.

WE WILL NOT give effect to or in any way enforce our collective-bargaining agreement with Congreso relating to any of our ship employees at a time when Congreso de Uniones Industriales de Puerto Rico does not represent an uncoerced majority of employees in an appropriate bargain-

ing unit of our ship employees; provided, however, that this will not require the withdrawal or elimination of any wage increases, or other benefits, terms, and conditions of employment established by that agreement.

WE WILL NOT assist Congreso de Uniones Industriales de Puerto Rico or its successors or assigns to become the representative of our ship employees by threatening our employees with discharge or being placed in vacation status should they not sign dues-checkoff agreements for Congreso NOR WILL WE withhold moneys from our employees' wages and remit same to Congreso de Uniones Industriales de Puerto Rico.

WE WILL NOT threaten our employees with loss of employment or discharge should they engage in union or protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reimburse all former and present ship (*Zorra*) employees for all initiation fees, dues, and other moneys, plus interest, paid by them or withheld from them.

PAN AMERICAN GRAIN CO., INC. AND PAN AMERICAN GRAIN MFG. CO., INC. AND ZORRA TRANSPORT, INC.